

TOWNSHIP OF FERGUSON

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January 23, 2006

Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: MB Docket No. 05-311

Dear Commissioners:

Enclosed is a response and comments from Ferguson Township, Centre County, Pennsylvania regarding the matter of Implementation of Section 621 (a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992.

On behalf of the Ferguson Township Board of Supervisors please accept these comments for the record. The Commissioners are urged do nothing that interferes with the Township's ability to regulate the **public** right-of-ways of the Township that we have been entrusted.

Sincerely,

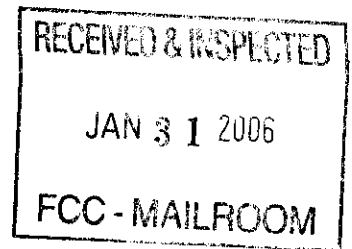
Township of Ferguson

Mark A. Kunkle
Township Manager

cc: Cable Consortium
Correspondence file

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554



In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

COMMENTS OF FERGUSON TOWNSHIP

These Comments are filed by the Township of Ferguson, Centre County, Pennsylvania in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Ferguson Township believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Many communities have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

Ferguson Township is a home rule township with a population of 15,000. Our franchised cable provider(s) is Adelphia. Our community has negotiated cable franchises since 1977.

Our Current Franchise

Our current franchise began on February 3, 1992 and expires on June 30, 2006. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are currently negotiating a franchise renewal with the incumbent provider and its successor Time Warner/Comcast.

Our franchise requires the cable operator to pay a franchise fee to the Township in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

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We require the cable operator to provide capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel (or capacity) devoted to educational access; and one channel (or capacity) devoted to government access.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

Federal Minimum Customer Service Standards Adopted. It is the intent of the grantor to enforce the following minimum customer service standards as established by the Federal law.

A. Cable System Office Hours and Telephone Availability:

(1) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, 7 days a week.

(a) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(b) After normal business hours, the access line maybe answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(2) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90% of the time under normal operating conditions, measured on a quarterly basis.

(3) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply.

(4) Under normal operating conditions, the customer will receive a busy signal less than 3% of the time.

(5) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

B. Installations, Outages and Service Calls. Under normal operating conditions, each of the following five standards will be met no less than 95% of the time measured on a quarterly basis:

(1) Standard installations will be performed within 7 business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(2) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(3) The "appointment window" alternatives for installations, service calls and other installation activities will be either a specific time or, or a maximum, a 4 hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(4) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(5) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

C. Communications Between Cable Operators and Cable Subscribers.

(1) Notifications to Subscribers:

(a) The cable operator shall provide written information on each of the following areas as the time of installation of service, at least annually to all subscribers, and at any time upon request:

- 1) Products and services offered.
- 2) Prices and options for programming services and conditions of subscription to programming and other services.
- 3) Installation and service maintenance policies.
- 4) Instructions on how to use the cable service.
- 5) Channel positions of programming carried on the system.
- 6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(b) Billing.

- 1) Bills will be clear, concise and understandable and shall be payable, without penalty, 25 days after the date of service.
- 2) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(c) Refunds. Refund checks will be issued promptly, but no later than either:

- 1) The customer's next billing cycle following resolution of the request or 30 days, whichever is earlier.
- 2) The return of the equipment supplied by the cable operator if service is terminated.

(d) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

Our franchise requires that the cable operator currently provide service to the following areas of our community: *Required Extensions of Service*. The cable system as constructed as of the date of the passage and final adoption of this Part substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the cable system as necessary, as desirable, or as required pursuant to the terms hereof within the service area. Whenever grantee shall receive a written request for service from at least seven potential subscribers within cable bearing strand feet ($\frac{1}{4}$ cable mile) of its trunk or distribution cable, it shall extend its cable system to such subscribers at no cost to said subscribers for system extension, other than the usual connection fees for all subscribers; provided, that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the cable system, or as provided for under §13-206.5. of this Part. With regard to underground extensions, terms and conditions shall be the same; however, the number of potential subscribers shall be twelve. Subscriber requests for service shall be numbered as one adult per service address.

Our franchise contains a "level playing field" provision which states the following: *Franchise Required*. No cable communications system shall be allowed to occupy or use the streets of the Township or be allowed to operate without a franchise in accordance with the provisions of this Part.

Our franchise contains the following insurance and bonding requirements: (*Construction Performance Bond*.)

(1) Within 30 days after the granting of any new franchise and prior to the commencement of construction work by the grantee, the grantee shall file with the grantor a construction performance bond, in the amount equal to the construction cost specified in the grantee's proposal, in favor of the grantor and any other person who may claim damages as a result of the breach of any duty by the grantee assured by such bond.

(2) Such bond as contemplated herein shall be in the form approved by the Township Solicitor in accordance with standard municipal bonding practices and shall, among other matters, cover the cost of removal of any properties installed by the grantee in the event said grantee shall default in the performance of its construction obligation.

(3) In no event shall the amount of said bond be construed to limit the liability of the grantee for damages.

Indemnification

(1) The grantee shall, by acceptance of the franchise granted herein, indemnify, defend, and hold harmless the grantor, its officers, boards, commissions, agents and employees from any and all claims, suits, judgments for damages in any way arising out of or through or alleged to arise out of or through the acts or omissions of grantee, its servants, employees, or agents.

(2) In the event any such claims shall arise, the grantee shall tender the defense thereof to the grantor; provided, however, that the grantor in its sole discretion may participate in the defense of such claims at its expense.

(3) As between the grantor and the grantee, the foregoing liability and indemnity obligations of the grantee pursuant to this Section shall not apply:

(a) To any services distributed over the municipal channels or the portion of the institutional network available to and used by the grantee to the extent that the grantor has not participated in the production of said services or any other act forming the basis for such claims.

(b) With respect to any negligent or wrongful act or failure to act by the grantor, its officers, employees, or agents.

Insurance

(1) The grantee shall maintain throughout the term of the franchise insurance in amounts at least as follows:

(a) *Worker's Compensation Insurance.* In such coverage as may be required by the laws of the Commonwealth of Pennsylvania and any amendments thereto.

(b) *Grantee's Liability.* In the amount specified as follows: \$500,000 per occurrence, and \$1,000,000 in the aggregate.

(c) *Comprehensive General Liability.* Bodily injury, property damage, personal injury, broadcaster's liability and coverage for copyright infringement in the amount specified as follows: \$500,000 per occurrence, and \$1,000,000 in the aggregate.

(d) *Comprehensive Automobile Liability.* Comprehensive automobile liability insurance for damages in the amount specified as follows: combined single limit \$1,000,000.

(2) The grantee shall furnish the grantor with copies of such insurance policies or certificates of insurance.

(3) Such insurance policies provided for herein shall name the grantor, its officers, boards, commission, agents, and employees as additional insured's and shall contain the following or similar endorsement:

"It is hereby understood and agreed that this insurance policy may not be cancelled by the surety or the intention not to renew be implemented by the surety until 30 days after receipt by the grantor by registered mail written notice of such intention to cancel or not renew."

(4) The minimum amounts set forth for such insurance shall not be construed to limit the liability of the grantee to the grantor under the franchise issued to the amounts of such insurance.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. A permit application along with required

processing fee is submitted to the Township. After review, normally 2 business days, a Highway Occupancy Permit is issued. The permit requires restoration of the right-of-way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement:

Enforcement

In the furtherance thereof, the compliance officer, 90 days after giving notice to the cable operators of grantor's intent to enforce these standards shall have the authority and responsibility to enforce these standards to the fullest extent permitted by the Federal law and in accordance with all substantive and procedural requirements of the Federal law. The compliance officer, upon receipt of a complaint of an alleged violation of the customer service standards by the cable operator(s), or discovery, or an alleged violation on its own accord, shall provide written notice of the same to the cable operator(s). The grantee shall have 5 days to respond to the notice. In furtherance thereof, the compliance officer may make any and all such orders and assess any and all such penalties for violation of these standards as are permitted by the Federal law, subject to the oversight and control of grantor, including, without limitation:

- a. Ordering the cable operator to pay credits or refunds to the subscribers to the cable operator's system.
- b. Filing suit against a cable operator to compel specific performance.
- c. Conducting performance evaluations at the time of renewal of the cable operator's franchise agreement.

The Franchising Process

The cable system(s) serving our community also serves many adjoining communities. During 2005 our community began working together with seven other communities to issue a cable franchise for Adelphia and its successor Time Warner/Comcast. This will allow the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement is automatically amended to be consistent with current federal law.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance the Township Cable Franchise ordinance provides: In the event that the grantor determines that the grantee has violated any provisions of this Part, any rule or regulation promulgated pursuant hereto, or any applicable Federal, State, or local law, the grantor shall make a written demand on the grantee that it remedy such violation. Such demand shall detail the nature the alleged default. If the violation, breach, failure, refusal, or neglect is not remedied to the satisfaction of the grantor within 30 days following the receipt of such demand, the grantor shall determine whether or not such violation, breach, failure, refusal, or neglect by the grantee was excusable or inexcusable, in accordance with the following procedure, which shall be conducted so as to provide the grantee with notice of the alleged violation and an opportunity to respond:

- (1) A public hearing shall be held and the grantee shall be provided with an opportunity to be heard upon 30 days written notice to the grantee of the time and the place of the hearing provided and the allegations of franchise violations. A permanent record of this hearing shall be kept.
- (2) If, after notice is given and at the grantee's option, a full public proceeding is held, the grantor determines that such violation, breach, failure, refusal or neglect by the grantee was excusable as provided, the grantor shall direct the grantee to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as the grantor may direct.
- (3) If, after notice is given and at the grantee's option, a full public proceeding is held, the grantor determines that such violation, breach, failure, refusal or neglect was inexcusable, then the grantor may assess a penalty or remedy.
- (4) If, after notice is given and at the grantee's option, a full public proceeding is held, the grantor declares the franchise or any renewal thereof breached, the parties may pursue their remedies pursuant to any other remedy, legal or equitable.

Grantee's Inability to Perform. In the event the grantee's performance or any part of the terms, conditions, obligations or requirements of the franchise is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof. Such causes beyond the grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God and civil emergencies.

Competitive Cable Systems

Our community was approached once by another cable provider in 1999 but the provider chose not to enter into any formal discussions. At that time a company called Telebeam, Inc. built a head in facility and began providing service to multi-family and hotel facilities in State College Borough. Due to the fact that most of the dense residential customers in the Township were served by underground cable it was cost prohibitive to overbuild the existing cable provider AT & T.

Conclusions

The local cable franchising process functions well in Ferguson Township. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

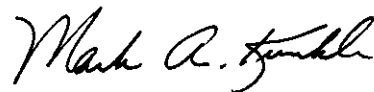
Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

Ferguson Township therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,



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